taxation of costs, preceding the entry of judgment, the master allowed to defendant, in addition to the full costs of defence, the costs of and incidental to the removal of the cause, although the order granting the writ was silent as to costs. The plaintiff thereupon obtained a summons calling upon defendant to show cause why the taxation should not be revised, on the ground, amongst others, that the costs of the removal had been improperly allowed to defendant.

J. Sidney Smith showed cause.

Foster supported the summons, citing *Reg.* v. *Summers*, 1 Salk. 55; *Reg.* v. *Papman*, 1 E. & B. 2; *Corley* v. *Roblin*, 5 U. C. L. J. 225; Marshall on Costs, 7.

Morrison, J.—The master reporting that in his opinion he ought not to have allowed the costs of the writ of *certiorari*, order granted.

Miller v. Nolan.

Interpleader—Sale after claim made—Delay.

Where notice of claim to certain goods seized by the sheriff was given on the 30th June, and the greater part of the goods were sold (as being perishable) by the sheriff on the 5th July, on an application for an interpleader order, made the 3rd August,

Held, that the sheriff was not justified, by the fact that the first seizure did not embrace all the goods of defendant, in delaying to apply till he could get possession of the residue.

[Chambers, Aug. 30, 1865.]

By a summons granted on the 3rd August, at the instance of the sheriff of the county of Frontenac, the claimant to certain goods seized by him and the plaintiff in the cause were called upon to state the nature and particulars of their respective claims, &c. The affidavits filed on both sides disclosed the following facts: Plaintiff gave his notice to the sheriff on the 30th June. As a portion of the property so seized was perishable, the sheriff proceeded to a sale on the 5th July.

The reason for not applying at once was thus stated: "My reason for not applying immediately for an interpleader order herein was as follows: I understood a portion of the defendant's property had been concealed or removed, and I was desirous, as this was part of the property claimed by the claimant, that the whole should be disposed of at the same time, without the necessity of making a second application; and since such sale I have discovered and have now under seizure in my possession a valuable mare; that as soon as I had discovered the said mare, being all the property which I thought it likely I might find, I instructed my attorney to apply for the usual interpleader order."

J. S. Smith for the sheriff.

Foster, for claimant, contended that the sheriff, having exercised his discretion (*Crump* v. *Day*, 4 C. B. 760) and parted with the possession of the goods (*Wheeler* v. *Murphy*, 1 U. C. Pr Rep. 336) after a claim had been made to them, was not in a position to ask for protection. That the claimant should not be forced to interplead for the proceeds of the sale of goods when he had claimed the goods themselves The hardship of having goods seized and sold for less than their value and receiving only the proceeds of the sale was a proper matter to be pressed before the judge (*Abbott* v. *Richards*, 15 M. & W. 191; *Booth* v. *Preston & B. Railway Co.* 3 U. C. Pr. Rep. 90). That the delay to apply was not satisfactorily accounted for (*Thompson* v. *Ward*, 1 U. C. Pr. Rep. 269; *Ridgway* v. *Fisher*, 3 Dow. 567; *Cook* v. *Allan*, 2 Dow. 11).

Adam Wilson, J.—The sheriff received the notice of claim on the 30th June, and sold part of the goods on the 5th of July, because, he says, the same were perishable. The rest, he says, he did not sell then. He does not say to what extent he sold or did not sell. The notice of claim shows the goods were not perishable, but even if so, I do not see what difference it would make, and the claimant says all the goods seized, but one mare, were sold many weeks ago. The sheriff's excuse for delay—for he does not apply till the 3rd August—is, that he had not seized all the goods, and he did not apply at his first seizure but was waiting till he could get the residue. This is no reason for his selling on the 5th July after the claim made. This was his own act, and he should bear it himself. Upon these grounds I discharge the summons with costs.

Summons discharged with costs.

ENGLISH REPORTS.

QUEEN'S BENCH

Mainprice v. Westley.

Principal and agent—Sale by auction—Peremptory sale—Liability of auctioneer—Reserve price.

The mortgagee of certain premises instructed an auctioneer to offer them on a specified day by public auction for peremptory sale. A handbill was thereupon issued by the auctioneer, announcing the sale "by direction of the mortgagee," and also stating that further particulars might be obtained "from Mr Hustwick, solicitor, or the auctioneer." At the sale the plaintiff made the highest bid, with the exception of Hustwick, who, acting for the vendor, outbid the plaintiff and bought in the property.

In an action brought against the auctioneer for refusing to sell the premises peremptorily, as advertised:—

Held, that, under the circumstances above mentioned, he was not liable.

[July 4, 1865.]

This was an action tried before Bramwell, B., at the Cambridgeshire Summer Assizes, 1864. The declaration stated that the defendant, being an auctioneer, was retained to sell by public auction a certain messuage, shop, and appurtenances, situated at Soham; and the defendant thereupon circulated certain handbills and other notices wherein it was stated and represented by him that he would offer the said messuage, &c., for *peremptory sale* on the 1st of April, 1864. And the plaintiff accordingly attended the sale, and the said messuage, &c, was offered for sale in pursuance of the said handbills, &c; and the plaintiff there and then bid the highest price for the said messuage, &c., except a certain price which was then and there, to the knowledge of the defendant, wrongfully and contrary to the terms whereon the said messuage, &c., were offered for sale, bid and offered by a certain agent on behalf of the vendor. Then followed the averment of performance of conditions pre cedent.

Breach—That the defendant, well knowing the premises, did not nor would not sell the said